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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,762	04/20/2004	Gebhard Gantner	DT-6794	5253
30377	7590	10/21/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			WEEKS, GLORIA R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/828,762

Applicant(s)

GANTNER ET AL.

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to Applicants' request for reconsideration and arguments received on August 15, 2005, all of which have been considered and acknowledged in this action.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rognmo (USPN 4,157,068).

In reference to claims 1, 2 and 5, Rognmo discloses a propellant container having a housing (1) and a housing inner space, wherein a portable electrical power supply (5) including one of a battery and a battery pack (column 4 lines 10-15) is arranged on and adapted to a propellant container (3, 7a-7i); wherein the electrical power source (5) is arranged in a receptacle (2) on the propellant container (3, 7a-7i).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 3 is rejected under 35 U.S.C. 102(b) as being unpatentable over Rognmo (USPN 4,157,068) in view of Jacobson et al. (USPN 4,127,243).

With respect to claim 3, Rognmo discloses a propellant container having an electrical power source (5) arranged in a receptacle (2) on a propellant container (3, 7a-7i), but does not disclose how the electrical power source receptacle is attached to the propellant container. Jacobson et al. teaches that it is known to mount an electrical power supply (42) on a propellant container (12) using a clip fastening. It would have been obvious to one having ordinary skill in the art at the time of the invention to fasten the electrical power source receptacle of Rognmo to the propellant container, as taught by Jacobson et al., since Jacobson et al. states at column 5 lines 32-36 that such a modification is a known conventional method of joining projectile mechanical means.

6. Claim 4 is rejected under 35 U.S.C. 102(b) as being unpatentable over Rognmo (USPN 4,157,068) in view of Saxe et al. (USPN 4,072,107).

Regarding claim 4, Rognmo discloses a propellant container having an electrical power source (5) arranged in a receptacle (2) on a propellant container (3, 7a-7i), but does not disclose how the electrical power source receptacle is attached to the propellant container. Saxe et al. teaches that is known to adhere an electric power source receptacle (68) to a propellant container (76). It would have been obvious to one having ordinary skill in the art at the time of the invention to adhere the electrical power source receptacle of Rognmo to the propellant container, as taught by Saxe et al., since Saxe et al. states at column 4 lines 46-50 that such a modification would prevent motion of the elements during motion.

Response to Arguments

7. Applicant's arguments filed August 15, 2005 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation "for internal combustion operated setting tools" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Applicant's invention is structurally drawn to a propellant container having a housing, housing inner space and a portable electrical supply on the propellant container, which is a self-contained description having no dependency on the introductory clause of an internal combustion setting tool. Therefore the preamble's inclusion of the phrase "for internal combustion operated setting tools" is not deemed to give life, meaning and vitality to the structure of the propellant container.

Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The container of Rognmo meets the structural limitations of Applicant's invention as stated.

Applicant has also argued that the inventions of Rognmo, Jacobson and Saxe are not in the field of Applicant's endeavor or pertinent to the problem(s) addressed by Applicant's invention. Examiner disagrees, as a propellant container is a known element of missiles, thereby placing it in the field of propellant charged projectiles.

In response to Applicant's argument that Rognmo fails to disclose a housing having an inner space receiving propellant, Examiner would like to cite column 3 lines 27-29 which states that a housing element (1), specifically section (3), contains a series of explosives or propellant. This disclosure is found to read on the limitations of claim 1. Whether one considers the propellant of Rognmo a part of the housing is irrelevant as the propellant, nonetheless, is received within the housing.

Additionally, Applicant has argued that the power means (5) of Rognmo is arranged "in the container and not "on"¹ the container as recited by claim 1. While Examiner agrees that the power means is within the container housing, it is still deemed to meet the limitation of being "on" the container as required by the definition of the term "on".

In light of Examiner's response to Applicant's arguments as presented, the rejections of the claims are deemed appropriate and final.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

¹ on (prep): Used to indicate position above and supported by or in contact with

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473.


The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks
Examiner
Art Unit 3721


grw
October 18, 2005


SCOTT A. SMITH
PRIMARY EXAMINER